

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

LINCOLN ANTHONY MOODY,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 10-3335-CV-S-DGK-H
MARTY ANDERSON, Warden,)	
United States Medical Center for)	
Federal Prisoners,)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition be dismissed without prejudice.

Petitioner filed *pro se* exceptions to the report and recommendation of the Magistrate. He continues to allege that he has exhausted administrative remedies.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that petitioner has failed to exhaust administrative remedies in this case. It should be noted, however, that in another case petitioner has filed, Moody v. Anderson, Case No. 10-3529-CV-S-RED-H, petitioner had exhausted his administrative remedies. He raised the same issues regarding having been assaulted, and a Report and

Recommendation has been entered, which addressed his petition on the merits. Accordingly, the Court finds that the conclusions of the Magistrate are correct and should be approved.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ADJUDGED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Greg Kays
GREG KAYS
United States District Judge

Date: June 3, 2011